

Decision **PROPOSED DECISION OF ALJ FARRAR** (Mailed 2/11/14)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Petition of the Cities of Concord, Taft, Madera, Kerman, and Clovis and Pacific Gas and Electric Company to Adopt, Amend, or Repeal a Regulation pursuant to Public Utilities Code Section 1708.5. (U39E).

Petition 13-09-006
(Filed September 11, 2013)

Order Instituting Rulemaking To Consider Single Methodology To Calculate Remittance Under Municipal Surcharge Act.

R. _____

DECISION GRANTING PETITION AND OPENING RULEMAKING

1. Summary

This order closes the petition proceeding and institutes a rulemaking proceeding to determine whether a single state-wide remittance methodology should be used by the Pacific Gas and Electric Company's, the Southern California Gas Company and San Diego Gas & Electric Company, and the Southern California Edison Company to calculate the franchise fee remittances provided for by California Public Utilities Code Sections 6352-6354.1. En route to this determination we will examine what, if any effect adoption of a single methodology will have on ratepayers, and cities and counties in the Investor-owned Utilities' (IOUs) jurisdictions as well as what, if any, effect the adoption of a single methodology will have on the IOUs.

2. Background

In Case (C.) 11-08-022, the Cities of Concord, Taft, Kerman, Madera, and Clovis (The Cities) challenged Pacific Gas and Electric Company's (PG&E) method of calculating municipal surcharge revenue remittances pursuant to the Municipal Public Lands Surcharge Act, Public Utilities Code Sections 6352-6354.1 (Municipal Surcharge Act). Specifically, the Cities contended that PG&E's methodology fails to reflect the payment of franchise fees in the energy transporter's agreement as required by the Surcharge according to the Cities, PG&E's methodology has resulted in some cities and municipalities being underpaid remittances for several years. The Cities requested that the Commission order PG&E to modify its remittance methodology and reimburse The Cities for past underpayments.

On November 14, 2011, then assigned Administrative Law Judge (ALJ) Gamson scheduled a prehearing conference (PHC). Prior to the PHC, ALJ Gamson issued a ruling directing PG&E to serve notice of the complaint and the upcoming PHC on all of the cities and counties in its jurisdiction which might be impacted by the Complaint.

The PHC was held on December 1, 2011. At the PHC the parties agreed to attempt to stipulate to the facts at issue. On December 20, 2011, the Assigned Commissioner's Ruling and Scoping Memo (Scoping Memo) issued. As noted in the Scoping Memo, in light of the issue presented, "...the Commission will need to conduct a statutory interpretation of the Municipal Surcharge Act."

In subsequent discussions the Cities and PG&E agreed that the relief requested in C.11-08-022 raised certain issues, the resolution of which could impact the surcharge remittance methodology employed by Investor-owned

Utilities (IOUs) throughout the state. The Cities and PG&E therefore agreed to file a joint petition pursuant to Public Utilities Code Section 1708.5, requesting that the Commission institute a separate rulemaking proceeding to establish a uniform methodology to be used by all IOUs for the future remittance of municipal surcharges. In anticipation of the Commission's institution of a separate rulemaking proceeding the Cities and PG&E agreed to dismiss C.11-08-022 without prejudice.¹ On September 11, 2013, pursuant to Public Utilities Code Section 1708.5, the Cities and PG&E jointly filed Petition 13-09-006, which asks the Commission to initiate a rulemaking proceeding to establish a single state-wide remittance methodology consistent with the Municipal Surcharge Act.

A PHC was convened in this proceeding by ALJ Farrar on January 4, 2014.² After adding the Southern California Gas Company and San Diego Gas & Electric Company (SoCalGas/SDG&E), and the Southern California Edison Company (SCE) as parties to the proceeding, ALJ Farrar directed the IOUs to provide a summary of their position and a statement of the methodology they currently use to calculate remittances under the Municipal Surcharge Act.

3. Discussion

3.1. The Municipal Surcharge Act

The adoption of direct access enabled Californians to purchase energy (the actual commodity) from third party energy service providers (ESPs). In 1993 the Legislature enacted the Municipal Surcharge Act. The Municipal Surcharge Act provides for a surcharge to replace, but not increase, franchise fees that would

¹ On August 5, 2013, the Cities and PG&E filed a joint motion to dismiss C.11-08-022.

² ALJ Farrar was assigned to this proceeding on September 24, 2013.

have been collected by the IOUs if not for changes in the regulatory environment such as the unbundling of the gas industry, related to the adoption of direct access. In addition to providing for the collection of a surcharge (*see* Section 6352(a)), Section 6354(b) of the Municipal Surcharge Act, which covers dispensation of the franchise fee, provides that:

Surcharges collected from the transportation customer shall be remitted to the municipality granting a franchise pursuant to this division in the manner and at the time prescribed for payment of franchise fees in the energy transporter's franchise agreement.³

PG&E, SCE, and SoCalGas/SDG&E (collectively, the IOUs) all purport to follow this directive and note that 100% of the revenue collected is remitted. However, while the IOUs use a common methodology to collect revenues, they do not use a common methodology to calculate the remittances with the result that, all other things being equal, the municipalities may receive different amounts of compensation, depending on which IOU serves their territory.

3.2. The PG&E and SCE Remittance Methodologies

There are 292 cities and counties within PG&E's service territory. PG&E remits the electric surcharges to 256 jurisdictions and remits the gas surcharge to 245 jurisdictions. PG&E uses a two-step process to calculate its remittances. First, PG&E calculates surcharges using its franchise fee factor and collects these amounts. PG&E then remits 100% of what it collects from end users in each municipality back to that same municipality. According to PG&E, because its

³ Section 6354(b) also provides that "the energy transporter may retain interest earned on cash balances resulting from the timing difference between the monthly collection of the surcharge and the remittance thereof, as required by individual Franchise agreements."

methodology doesn't pool the surcharges that are collected it does not result in cross-subsidization (*i.e.* where the end users in one municipality subsidize another municipality).

SCE reports that in 2012 it paid the surcharge to approximately 199 of the 206 jurisdictions in which SCE maintains a franchise. SCE calculates the surcharge utilizing the franchise fee factor or generation municipal surcharge factor (of 0.009056) adopted by the Commission in SCE's most recent general rate case.⁴ SCE collects the surcharge from the applicable transportation customers and remits such payments to each of its cities and counties pursuant to and in accordance with the payment schedule as set forth in its respective franchises.

Thus it appears both PG&E and SCE collect the surcharge from a transportation customer in a particular municipality and thereafter remit the surcharge collected from that customer to the municipality where the customer is located without regard to the payment calculation set forth in the franchise agreements.

3.3.The SoCalGas/SDG&E Remittance Methodology

In contrast to PG&E and SCE, SoCalGas/SDG&E claim that Section 6354 requires utilities look to each municipality's franchise agreement to determine how franchise fees are paid and then use the same manner of calculation for remittance of the surcharges collected under Section 6353. In effect, this methodology calculates the surcharge remittances by treating the third party revenues from customers within a given city in the same manner that it treats revenues under the city's franchise agreement. Thus, the SoCalGas/SDG&E

⁴ And see Advice Filing No. 2336-E.

method applies a specific percentage – which varies from franchise agreement (and one city) to the next -to determine the surcharge remittance whereas the PG&E and SCE methodology takes an average of cities percentages to derive the franchise factor fee.

3.3. Additional Questions Presented

In Decision (D.) 03-10-040 the Commission directed the IOUs to remit surcharge payments associated with the California Department of Water Resources' (DWR's) electricity sales based on the municipalities' individual franchise agreements. Subsequently, in D.06-05-005 the Commission clarified that amending PG&E's long-standing methodology for remitting Municipal Surcharge Fees on other third party revenues was beyond the scope of D.03-10-040 and that its directive only applied to DWR's electricity sales.

Moreover, as noted in D.06-05-005:

[T]he Commission did not consider the adverse effects that could result in terms of disrupting the expected stream of municipal revenues and providing essential municipal services if PG&E were required to revise its methodology for remitting municipal surcharges other than those related to DWR revenues.⁵

The concern voiced in D.06-05-005 appears warranted. Among other things, SoCalGas/SDG&E assert that the methodology used by PG&E and SCE "has the effect of increasing surcharge revenue to municipalities with 'heavy users' of transported gas in a manner not consistent with the franchise calculations -- to the detriment of 'higher mileage' municipalities that don't have 'heavy users' of transported gas."

⁵ D.06-05-005 at 9-10.

In addition to the potentially adverse effects that a change in surcharge remittance calculation methodology could have on cities and municipalities, when contemplating adoption of a state-wide surcharge remittance methodology we must also consider the effects such a change could have on ratepayers and the IOUs. We may for example require assurances that franchise agreements do not provide for excessive surcharges.

4. Preliminary Scoping Memo

This Order Instituting Rulemaking (OIR) will be conducted in accordance with Article 6 of the Commission's Rules of Practice and Procedure. As required by Rule 7.3, this order includes a preliminary scoping memo as set forth below.

4.1. Issues

The issues to be considered in this proceeding, as discussed earlier in this OIR, relate to whether the Commission should adopt a single methodology for the IOUs to use to calculate franchise fee remittances under the Municipal Surcharge Act. Specifically, the Commission will seek comment on:

- Whether the Commission should adopt the PG&E methodology, the Sempra Methodology, or some other methodology for the IOUs to use to calculate franchise fee remittances under the Municipal Surcharge Act.
- What, if any, impact(s) the adoption of the PG&E methodology, the Sempra Methodology, or some other methodology to calculate remittances under the Municipal Surcharge Act will have on ratepayers in the IOUs jurisdictions;
- What, if any, impact(s) the adoption of the PG&E methodology, the Sempra Methodology, or some other methodology to calculate remittances under the Municipal Surcharge Act will have on cities and counties in the IOUs jurisdictions; and

- What, if any, impact(s) the adoption of the PG&E methodology, the Sempra Methodology, or some other methodology to calculate remittances under the Municipal Surcharge Act will have on the IOUs.

Neither the methodology used to collect the franchise fees nor the reasonableness of prior surcharge remittance methodologies will be considered in this proceeding.

4.2. Category of Proceeding and Need for Hearing

Rule 7.1(d) requires that an OIR preliminarily determine the category of the proceeding and the need for hearing. As a preliminary matter, we determine that this proceeding is a “quasi-legislative” proceeding, as that term is defined in Rule 1.3(d). It is contemplated that this proceeding shall be conducted through written comments and without the need for evidentiary hearings.

Anyone who objects to the preliminary categorization of this Rulemaking as “quasi-legislative,” or to the preliminary hearing determination, must state the objections in opening comments to this Rulemaking. If the person believes hearings are necessary, the comments must state:

- a) The specific disputed fact for which hearing is sought;
- b) Justification for the hearing (*e.g.*, why the fact is material);
- c) What the party would seek to demonstrate through a hearing; and
- d) Anything else necessary for the purpose of making an informed ruling on the request for hearing.

After considering any comments on the preliminary scoping memo, the assigned Commissioner will issue a scoping memo that, among other things, will make a final category determination; this determination is subject to appeal as specified in Rule 7.6(a).

4.3. Schedule

For purposes of meeting the scoping memo requirements, and to expedite the proceeding, we establish the following preliminary schedule:

DATE	EVENT
10 days from mailing of this OIR	Deadline for service by IOUs on cities and municipalities in their jurisdictions.
60 days from mailing	Comments on impacts and methodologies filed and served.
90 days from mailing	Reply Comments filed and served.
TBD	Prehearing Conference and/or Scoping Memo
TBD	Hearings (if necessary)

The assigned Commissioner, by ruling on the scoping memo and subsequent rulings, and the assigned ALJ, by ruling with the assigned Commissioner's concurrence, may modify the schedule as necessary during the course of the proceeding. We anticipate this proceeding will be resolved within 18 months from the issuance of the scoping memo.

5. Comments on the Draft OIR

The Draft OIR in this matter was mailed to the parties on February 10, 2014, in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.6 of the Commission's Rules of Practice and Procedure. Opening comments on the Draft OIR were due on March 3, 2014, and reply comments were due on March 17, 2014. Opening comments were filed by the Cities, PG&E, SCE, and SoCalGas/SDG&E and reply comments were filed by the Cities, PG&E, SCE, and SoCalGas/SDG&E. This decision reflects our review and consideration of the parties' comments.

6. Service List and Subscription Service

The service list for this proceeding was updated on January 14, 2014. Within 10 days from the date of mailing of this OIR, the IOUs shall serve the OIR on all of the cities and counties in their jurisdictions which might be impacted by the OIR.

Any person or representative of an entity seeking to become a party to this Rulemaking (*i.e.*, actively participate in the proceeding by filing comments or appearing at workshops) should send a request to the Commission's Process Office, 505 Van Ness Avenue, San Francisco, California 94102 (or Process_Office@cpuc.ca.gov) to be placed on the official service list. Individuals seeking only to monitor the proceeding (*i.e.*, but not participate as an active party) may request to be added to the service list as "Information Only." Include the following information:

- Docket Number of the OIR;
- Name and Party Represented, if Applicable;
- Postal Address;
- Telephone Number;
- E-mail Address; and
- Desired Status (Party or "Information Only").

The service list will be posted on the Commission's website, www.cpuc.ca.gov soon thereafter.

The Commission has adopted rules for the electronic service of documents related to its proceedings, Rule 1.10, available on our website at http://docs.cpuc.ca.gov/WORD_PDF/AGENDA_DECISION/143256.PDF. We will follow the electronic service protocols adopted by the Commission in Rule 1.10 for all documents, whether formally filed or just served.

This Rule provides for electronic service of documents, in a searchable format, unless the appearance or state service list member did not provide an e-mail address. If no e-mail address was provided, service should be made by United States mail. In this proceeding, concurrent e-mail service to all persons on the service list for whom an e-mail address is available will be required, including those listed under “Information Only.” Parties are expected to provide paper copies of served documents upon request.

E-mail communication about this OIR proceeding should include, at a minimum, the following information on the subject line of the e-mail:

R. [xx xx xxx] – OIR on the Municipal Surcharge Act. In addition, the party sending the e-mail should briefly describe the attached communication; for example, “Comments.” Paper format copies, in addition to electronic copies, shall be served on the assigned Commissioner and the ALJ.

This Rulemaking can also be monitored through the Commission’s document subscription service; subscribers will receive electronic copies of documents in this Rulemaking that are published on the Commission’s website. There is no need to be on the service list in order to use the subscription service. Instructions for enrolling in the subscription service are available on the Commission’s website at <http://subscribecpuc.cpuc.ca.gov/>.

7. Public Advisor

Any person or entity interested in participating in this OIR who is unfamiliar with the Commission’s procedures should contact the Commission’s Public Advisor in San Francisco at (415) 703-2074 or (866) 849-8390 or e-mail public.advisor@cpuc.ca.gov; or in Los Angeles at (213) 576-7055 or (866) 849-8391, or e-mail public.advisor.la@cpuc.ca.gov. The TTY number is (866) 836-7825.

8. Intervenor Compensation

Any party that expects to request intervenor compensation for its participation in this OIR shall file its notice of intent to claim intervenor compensation in accordance with Rule 17.1 within 30 days of the filing of reply comments or of the prehearing conference, whichever is later.

9. *Ex Parte* Communications

Ex parte communications are defined in Rule 8.1. In quasi-legislative proceedings such as this one, *ex parte* communications are allowed without restriction or reporting requirement as set forth in Rule 8.3.

Therefore **IT IS ORDERED** that:

1. An Order Instituting Rulemaking is instituted for the purpose of determining whether the Commission should adopt a single methodology for the Investor-owned Utilities to use to calculate franchise fee remittances.
2. This Rulemaking is preliminarily determined to be a quasi-legislative proceeding, as that term is defined in Rule 1.3(d), and it is preliminarily determined that no hearings are necessary.
3. The outcome of this Rulemaking will be applicable to the Pacific Gas and Electric Company, the Southern California Edison Company, the Southern California Gas Company and the San Diego Gas & Electric Company.
4. The Executive Director shall cause this Order Instituting Rulemaking to be served on the service list for this proceeding.
5. The preliminary schedule for this proceeding is as set forth in the body of this Order Instituting Rulemaking. The assigned Commissioner through her scoping memo and subsequent rulings, and the assigned Administrative Law

Judge by ruling with the assigned Commissioner's concurrence, may modify the schedule as necessary.

6. The issues to be considered in this Order Instituting Rulemaking are those set forth in the body of this Order Instituting Rulemaking.

7. Comments and reply comments must be filed 60 and 90 days, respectively, from the mailing of this Order Instituting Rulemaking, unless the assigned Commissioner or Administrative Law Judge modifies the schedule. Comments and reply comments shall conform to the requirements of the Commission's Rules of Practice and Procedure.

8. Any persons objecting to the preliminary categorization of this Order Instituting Rulemaking as "quasi-legislative," or to the preliminary determination on the need for hearings, issues to be considered, or schedule shall state their objections in their opening comments of this Order Instituting Rulemaking.

9. Within 20 days of the date of issuance of this order, any person or representative of an entity seeking to become a party to this Order Instituting Rulemaking must send a request to the Commission's Process Office, 505 Van Ness Avenue, San Francisco, California 94102 (or Process_Office@cpuc.ca.gov) to be placed on the official service list for this proceeding. Individuals seeking only to monitor the proceeding, but not participate as an active party may request to be added to the service list as "Information Only."

10. After initial service of this order, a new service list for the proceeding shall be established following procedures set forth in this order. The Commission's Process Office will publish the official service list on the Commission's website (www.cpuc.ca.gov) as soon as practical. The assigned Commissioner, and the

assigned Administrative Law Judge, acting with the assigned Commissioner's concurrence, shall have ongoing oversight of the service list and may institute changes to the list or the procedures governing it as necessary.

11. Any party that expects to claim intervenor compensation for its participation in this Order Instituting Rulemaking shall file its notice of intent to claim intervenor compensation in accordance with Rule 17.1 of the Commission's Rules of Practice and Procedure, within 30 days of the filing of reply comments or of the prehearing conference, whichever is later.

12. The proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.